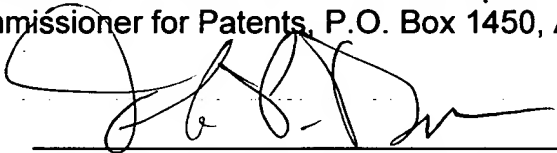


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Thomas A. Polcyn, Reg. No. 41,256

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In re application of:
Buchanan-Greene

Serial No.: 09/992,811

Filed: November 19, 2001

For: METHOD OF SELLING AND
DISTRIBUTING ARTICLES
ASSOCIATED WITH LIVE EVENTS

GROUP 3600

Examiner: Cuff, Michael

Group Art Unit: 3627

BOX B.P.A.I.
Assistant Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

APPLICANT'S APPEAL BRIEF UNDER 37 C.F.R. §1.192

With reference to the Notice of Appeal filed in connection with the above-referenced application on November 19, 2001, this is Applicant's brief and argument to the U.S. Patent Office Board of Patent Appeals and Interferences under 37 C.F.R. §1.192 in the appeal of the Examiner's Final Rejection of Claims 1-18 and 32-43. This Brief is being filed in triplicate.

(1) Real Party in Interest

The Friday Group, LLC is the real party in interest, having a 100% interest in the subject application, as reflected in an assignment recorded with the U.S. Patent and Trademark Office on November 19, 2001 at Reel/Frame 012327/0050.

(2) Related Appeals and Interferences

Applicant's attorney is not aware of any related appeals or interferences.

(3) Status of Claims

Claims 10-18 and 32-43 are pending in the application. This is an appeal from the rejection of Claims 1-18 and 32-43 made in the Office Action mailed on November 3, 2004. The Claims on appeal are Claims 1-18 and 32-43. These claims are set forth in full in **Appendix A** attached hereto and incorporated herein.

(4) Status of Amendments

The application was originally filed with Claims 1-31. Claims 32-40 were added by Preliminary Amendment on March 25, 2003. A Petition to Make Special was submitted on May 14, 2003. In an Office Action mailed on August 14, 2003, a restriction requirement was issued and claims 1-18 and 32-40 were rejected. In Applicant's Amendment and Response A, filed on September 19, 2003, Claims 19-31 were withdrawn from consideration pursuant to a provisional election/restriction. No claims were amended in Applicant's Response A. Claims 1-18 and 32-40 were rejected in the second Office Action that was mailed on December 11, 2003. In Applicant's Amendment and response B, filed on December 29,

2003, claims 1-3, 6-16, 32, 34-36, and 38-40 were amended and claims 41-43 were added.

In the third Office Action dated June 1, 2004, claims 1-18 and 32-43 were rejected. No claims were amended in Applicant's Amendment and Response C filed on July 20, 2004.

Thus, the Claims pending in the application, and now before the Board in this appeal, are Claims 1-18 and 32-43.

(5) Summary of the Invention

The present invention relates to the sale and distribution of articles associated with live events. More particularly, the present invention relates to a method of selling recordings of a live event and other event-specific articles at a point of sale of tickets for the live event before the live event has taken place or before another specified cut-off date. (Specification page 1, lines 2-6).

In general, a method of the present invention comprises the steps of: providing an opportunity for prospective event ticket purchasers to pre-purchase one or more copies of a recording of at least a portion of a live event; conducting said live event; recording at least a portion of said live event; determining a number of copies of said recording pre-purchased; calculating a desirable number of copies of said recording to be manufactured; manufacturing said desirable number of copies of said recording; and distributing at least some of the manufactured copies of said recording to those that pre-purchased them. The opportunity for pre-purchasing occurs at a point of sale of tickets for the live event to be recorded before the live event occurs. (Specification page 6, line 19 to page 7, line 5).

In another aspect of the invention, a method comprises the steps of: providing an opportunity for prospective event ticket purchasers to purchase one or more copies of a recording of a live event before a specified cut-off date; conducting said live event, recording

said live event; determining a number of copies of said recording purchased before said specified cut-off date; calculating a desirable number of copies of said recording to be manufactured based on a function of the determined number of copies purchased before said specified cut-off date; manufacturing said desirable number of copies of said recording; and distributing at least some of the manufactured copies of said recording to those that purchased them before the specified cut-off date. The opportunity to purchase the copies occurs at a point of sale of tickets for the live event to be recorded before the live event occurs. (Specification page 7, lines 6-18).

A first embodiment of a method of the present invention is shown schematically in Figure 1 and represented generally by the reference numeral 10. In general, the method 10 provides prospective live event ticket purchasers 12 with an opportunity to pre-purchase copies of a recording of the live event they will attend, before the live event has been conducted or recorded or before some other specified cut-off date, as discussed below. As shown in Figure 1, at a point-of-sale 14 of tickets for a live event, prospective live event ticket purchasers 12 are given an opportunity 16 to purchase tickets to the live event, as is well known in the art. However, unlike the prior art, at the same point-of-sale 14 the prospective live event ticket purchasers 12 are also given an opportunity 18 to pre-purchase copies of a recording of the live event they will attend, before the live event has been conducted and recorded or before some other specified cut-off date. (Specification page 10, lines 10-23).

At the outset, it should be noted that "live event" may be a live musical performance (e.g., musical concert, opera, symphony, recital, etc.). (Specification page 10, lines 23-24). This listing is illustrative, but is certainly not exhaustive. Other live events could be conducted and recorded in association with the present invention without departing from the scope of the present invention. (Specification 11, lines 6-9). It should also be noted that the

“recording” preferably comprises an audio recording, a video recording, a transcript, or some combination thereof. (Specification page 11, lines 10-11). Preferably, the task of recording the live event will be performed by a professional recording company that has been retained for the job by the artist or other holder of rights. In any case, the performance of the step of recording 24 (e.g., filming, video tape recording, digital video recording, photographing, drawing, tape recording, digital audio recording, writing, etc.) is well within the knowledge of one of ordinary skill in the art. (Specification page 11, lines 18-23). In addition, it should be noted that “copies” of the recording refers to any manner of reproduction of the recording that is suitable for mass production and distribution. (Specification page 12, lines 1-3).

With continued reference to Figure 1, the method 10 further comprises the step of determining a number of copies of said recording pre-purchased 20 at the point-of-sale 14 of tickets for the live event. Apart from the obvious (i.e., counting the number of copies pre-purchased), the manner of determining the number of copies pre-purchased 20 will depend on the nature of the point-of-sale 14, as discussed more fully below. In any case, however, the step of determining the number of copies pre-purchased 20 preferably includes the step of reviewing information about the purchaser (e.g., name, mailing address, shipping address, credit card or other payment information, number and types of copies ordered, etc.) obtained at the point-of-sale 14. (Specification page 12, lines 15-25).

The method 10 illustrated in Figure 1 also comprises the steps of conducting the live event 22 and recording at least a portion of the live event 24 being conducted. (Specification page 13, lines 1-3). After the live event has been recorded 24, a desired number of copies of the recording are manufactured 26. (Specification page 13, lines 5-7). The number of copies desired to be manufactured is then calculated 28 based on a function of the determined number of copies 20. (Specification page 13, 9-10).

Preferably, the opportunity 16 to purchase tickets to the live event and the opportunity 18 to pre-purchase copies of a recording of the live event both occur before the live event is conducted 22 and recorded 24. This preferred sequence is illustrated in Figure 2, which is a timeline showing the preferred sequence of events. As shown in Figure 2, the opportunity 16 to purchase tickets to the live event and the opportunity 18 to pre-purchase copies of a recording of the live event both begin at substantially the same time at an initial offering date 30. Preferably, the opportunity 16 to purchase tickets and the opportunity 18 to pre-purchase copies of recordings both terminate at a closing date 32, which is preferably before the live event is conducted 22. Figure 2 also illustrates that the step of manufacturing copies of the recording 26 does not begin until after a manufacturing date 34, which occurs after the live event 22 has been conducted. (Specification page 13, lines 12-25).

In a variation of the method 10 of Figure 1, the opportunity 18 to purchase copies of recordings extends beyond a date that the live event is conducted 22. This sequence is illustrated in Figure 3, which is a timeline showing the sequence of events for this variation. As shown in Figure 3, the opportunity 16 to purchase tickets to the live event and the opportunity 18 to purchase copies of a recording of the live event both begin at substantially the same time at an initial offering date 40. Preferably, the opportunity 16 to purchase tickets terminates at a ticket sale closing date 42, which is before the live event is conducted 22. However, in this variation, the opportunity 18 to purchase copies of recordings does not terminate until a specified "cut-off" date 44, which is after the date 46 that the live event 22 is concluded. A manufacturing date 48 occurs after the date 46 of the live event 22, and preferably after the specified "cut-off" date 44 for purchase copies of recordings 18. In this variation, the purchaser does not necessarily have to decide whether or not to purchase a

copy of a recording of the live event at the point-of-sale 14 of tickets, and may make that decision all the way up to the specified "cut-off" date 44. (Specification page 14, lines 1-17).

Referring again to Figure 1, once a desired number of copies has been manufactured 26, at least some of the copies manufactured are distributed 50 to those that pre-purchased them. This may be accomplished using the information about the purchaser (e.g., name, mailing address, shipping address, credit card or other payment information, number and types of copies ordered, etc.) obtained at the point-of-sale 14. If more copies are manufactured 26 that were pre-purchased 18, any extra copies may be distributed 52 in other channels of trade for sale or other dissemination. (Specification page 15, lines 4-11).

As stated above, a desirable number of copies to be manufactured is calculated 28 based on a function of the determined number of pre-purchased copies 20. The determined number of pre-purchased copies 20 represents a number of automatic sales for which there is a substantially guaranteed return. This is one important benefit of the present invention, because it gives recording companies, artists and other rights holders a convenient mechanism for gauging a desirable number of copies of live event recordings to be produced, before the live event has been conducted and recorded and, more importantly, before expenses associated with manufacturing the copies have been incurred. Depending on market conditions, predicted popularity of a particular recording, etc., the calculated desirable number of copies to be manufactured 28 may equal or exceed the determined number of copies pre-purchased 20. (Specification page 15, lines 12-25). The calculated desirable number of copies (CDN) to be manufactured 28 may be also be represented by the function $CDN = (DNP) \times (Y)$, where DNP is the determined number of copies pre-purchased 20 and Y is the percentage of DNP to be manufactured. (Specification page 16, lines 13-17).

Again, as illustrated in Figure 1, the opportunity 16 to purchase tickets to the live event and the opportunity 18 to purchase or "pre-purchase" copies of a recording of the live event both occur at the point-of-sale 14. Thus, the method 10 provides prospective live event ticket purchasers 12 with a convenient mechanism for pre-purchasing recordings of the live event before the event occurs (as shown in Figure 2) or before another specified cut-off date (as shown in Figure 3). Traditional points-of-sale of tickets for live events include the ticket box office, telephone ticket orders whereby a ticket purchase transaction takes place via telephone between an event ticket purchaser and a remote event ticket seller that sells tickets for the live event, mail order whereby a ticket purchase transaction takes place through the mail delivery system between an event ticket purchaser and a remote event ticket seller that sells tickets for the live event, and an electronic transaction over the Internet whereby an event ticket purchaser uses a user interface to access the Internet to purchase an event ticket from a remote event ticket seller. These traditional points-of-sale for live event tickets can also be employed in the present invention as points-of-sale 14 for the purchase or "pre-purchase" copies of a recording of the live event. (Specification page 17, lines 4-21).

Regardless of the form of the point-of-sale 14, the prospective event ticket purchaser 12 is presented at the point-of-sale 14 with an opportunity to purchase event tickets 16 and/or an opportunity to purchase or "pre-purchase" copies of a recording of the live event 18. In cases where event ticket purchasers wish to purchase an event ticket as well as a copy of a recording of the live event, the cost of the copy is charged to the purchaser as an "add on" charge to the ticket price. The recording company, artist or other rights holder may elect to require that a ticket be purchased before providing the purchaser with the opportunity to purchase copies of a recording of the live event 18. However, the method of the invention

may also be practiced in a manner whereby purchasers may elect to purchase copies of a recording of the live event 18 at the point-of-sale 14, even if they do not purchase a ticket for the event. (Specification page 18, lines 9-21).

(6) Issues

A. Would the invention set forth in Claims 1-5 and 8-18 have been obvious in view of Griner et al. (U.S. Patent Application No. 09/964,269) considered in view of Walker et al. (U.S. Patent No. 5,945,653)?

B. Would the invention set forth in Claims 32-38, 40, and 43 have been obvious in view of Griner et al. considered in view of Walker et al.?

C. Would the invention set forth in claims 6, 7, 41, and 42 have been obvious in view of Griner et al. considered in view of Walker et al. and further in view of Stonedahl (U.S. Patent Application No. 10/174,611)?

D. Would the invention set forth in claim 39 have been obvious in view of Griner et al. considered in view of Walker et al. and further in view of Stonedahl?

(7) Grouping of the Claims

- A. Claims 1-5 and 8-18 stand or fall together with respect to issue A.
- B. Claims 32-38, 40 and 43 stand or fall together with respect to issue B
- C. Claims 6, 7, 41, and 42 stand or fall together with respect to issue C.
- D. Claim 39 stands alone with respect to issue D.

(8) Arguments on Patentability

A. Claims 1-5 and 8-18 recite subject matter of the invention that is not made obvious by Griner et al. considered in view of Walker et al.

Claims 1-5 and 8-18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Griner et al. in view of Walker et al. Specifically, the November 3, 2004 Office Action (hereinafter "the Office Action") at page 2 alleges that "Griner et al. shows all of the limitations of the claims except for specifying a POS and the opportunity for prospective event ticket purchasers to pre-purchase a recording copy." The Office Action (at page 3) further alleges that "Walker et al. teaches, [at] column 17, lines 55-63, POS terminals where the actual functions that are to affect transactions may be set [by] merchants such as pre-purchased discounts as purchasing incentives and the like in order to increase revenue (a POS and the opportunity for prospective event ticket purchasers to pre-purchase a recording copy)." Based on this premise, the Office Action concludes that it would have been obvious to one of ordinary skill in the art to modify the Griner et al. system to incorporate the POS system of Walker et al. in order to increase revenue. For reasons explained below, Applicant respectfully disagrees with both the premise and the conclusion.

(i) Independent Claims 1 and 13

Independent Claim 1 recites:

A method comprising the steps of providing, at a point-of-sale of tickets for a live performance event before said live performance event occurs, an opportunity for prospective event ticket purchasers to pre-purchase one or more copies of a recording of at least a portion of said live performance event; conducting said live performance event; recording at least a portion of said live performance event; manufacturing a desirable number of copies of said recording; and distributing at least some of the manufactured copies of said recording to those that pre-purchased them.

Similarly, independent Claim 13 recites:

A method comprising the steps of providing, at a point-of-sale of tickets for a live performance event before said live performance event occurs, an opportunity for prospective event ticket purchasers to purchase one or more copies of a recording of said live performance event before a specified cut-off date; conducting said live performance event; recording said live performance event; manufacturing a desirable number of copies of said recording; and distributing at least some of the manufactured copies of said recording to those that purchased them before said specified cut-off date.

(ii) **Griner et al. in view of Walker et al.**

It is respectfully submitted that claim 1 is patentable over Griner et al. and Walker et al., because (1) there is no teaching or suggestion contained in either reference that would have motivated one skilled in the art to combine their teachings to create the claimed invention, and (2) even if combined, the teachings of Griner et al. and Walker et al. still fall short of the claimed invention.

(1) **There is No Teaching or Suggestion to Combine Griner et al. and Walker et al.**

The statutory standard for the ultimate determination for obviousness provides that a claimed invention is unpatentable if the differences between it and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art. Brown & Williamson Tobacco Corp. v. Phillip Morris Inc., 56 U.S.P.Q.2d 1456, 1459 (Fed. Cir. 2000). A showing of a suggestion, teaching or motivation to combine the prior art references is an essential evidentiary component for an obviousness holding. C. R. Bard, Inc. v. M3 Sys., Inc., 48 U.S.P.Q.2d 1225, 1232 (Fed. Cir. 1998). This evidence may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, from the

nature of the problem to be solved, but the [Office Action] must identify specifically the reasons one of ordinary skill in the art would have been motivated to select the references and combine them. In re Rouffet, 47 U.S.P.Q.2d 1453, 1459 (Fed. Cir. 1998). The Office Action can satisfy the burden of obviousness in light of a combination only by showing some objective teaching leading to the combination. In re Fritch, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the invention's disclosure as a blueprint for piecing together the prior art to defeat patentability -- the essence of hindsight. Graham v. John Deere Co., 148 U.S.P.Q. 459, 467 (1966). "To imbue one of ordinary skill in the art with the knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against teacher." W. L. Gore & Assoc. v. Garlock, Inc., 220 U.S.P.Q. 203, 312-313 (Fed. Cir. 1983).

Claim 1 recites, in pertinent part, the step of "providing, at a point-of-sale of tickets for a live performance event before said live performance event occurs, an opportunity for prospective event ticket purchasers to pre-purchase one or more copies of a recording of at least a portion of said live performance event..."

The Office Action at page 2 acknowledges that Griner et al. fails to disclose a POS and the opportunity for prospective event ticket purchasers to pre-purchase a recording copy, and Applicant agrees. This is because the Griner et al. invention relates to high-technology equipment used for creating multiple recordings of an event simultaneously, so that copies can be made available to event attendees shortly after the event has ended. See the Abstract. The Griner et al. technology accomplishes this in two ways. First, as the event is being recorded live, an editing module parses a primary event file into multiple "discrete

portions” which can each be edited individually and then copied to recording media as each track or “portion” becomes available. See paragraphs 0042-0043. Thus, copying the edited tracks to CD or other recording media (in sequence as they become available) can begin while the event is still being conducted and recorded. Second, Griner et al. discloses the use of multiple CD burners working in parallel, copying the edited tracks to multiple CDs, which will then be made available to event attendees shortly after the event has ended. See paragraph 0033. Thus, the teachings of Griner et al. are limited to solving the problem of how to make numerous copies of the event recording available as soon as possible following conclusion of the event. Griner et al. does not disclose, teach or suggest any manner of marketing or selling the recordings, and certainly does not disclose, teach or suggest “providing, at a point-of-sale of tickets for a live performance event before said live performance event occurs, an opportunity for prospective event ticket purchasers to pre-purchase one or more copies of a recording of at least a portion of said live performance event...” as required by claim 1.

Walker et al. discloses a system and method for establishing and executing functions to affect credit card accounts and transactions. The “functions” referenced throughout the Walker et al. specification are said by the Office Action (at page 3 with reference to column 17, lines 55-63 of Walker) to include “discounts, dollars off, incentive interest rates (e.g., no interest for 6 months), rebate due, or inclusion of customer-specified text based messages (e.g., message codes or personal accounting codes which are retrieved at a point-of-sale and which are to appear on a monthly credit card billing statement).” The entire specification of Walker et al. relates to use of the disclosed system and method for establishing and executing such “functions” in the context of credit card transactions.

The Office Action focuses on lines 55-63 in column 17 of Walker et al., which state:

“[T]he actual functions that are to affect transactions may be set by merchants such as pre-purchased discounts as purchasing incentives and the like, by customers desiring to record transaction information such as text strings and the like, and by credit card issuers as incentives to utilize and/or activate credit card accounts. In any event, the functions contemplated by the present [invention] are intended to be processed utilizing conventional and readily available point-of-sale processing systems that allow for entry of alpha and numeric data.”

The Office Action alleges that this excerpt from Walker et al. teaches “a POS and the opportunity for prospective event ticket purchasers to pre-purchase a recording copy” (refer to the first full paragraph of page 3 of the Office Action). However, Applicant respectfully submits that there is a critical disconnect between this excerpt from Walker et al. and the Office Action’s apparent interpretation of what it discloses or teaches. Applicant does not deny that the system and method of Walker et al. may be put into use at a retail “point-of-sale.” However, nothing in this excerpt (or anywhere else in the specification) of Walker et al. discloses or teaches a method comprising the step of “providing, at a point-of-sale of tickets for a live performance event before said live performance event occurs, an opportunity for prospective event ticket purchasers to pre-purchase one or more copies of a recording of at least a portion of said live performance event...” as claimed.

Walker et al. has nothing to do with the sale of tickets for a live performance event, and certainly does not teach a method of giving prospective event ticket purchasers an opportunity to pre-purchase a recording of the event at the POS of tickets before the live performance event occurs. Walker appears to be directed to a field that is entirely distinct

from the field of the present invention.¹ The Office Action relies on the premise that this excerpt of Walker et al. teaches “a POS and the opportunity for prospective event ticket purchasers to pre-purchase a recording copy” in order to reach the conclusion that it would have been obvious to one of ordinary skill in the art to modify the Griner et al. system to incorporate the POS system of Walker et al. However, for reasons explained above, this is a false premise.

In light of the above, Applicant respectfully submits that the Office Action provides no evidence of an objective teaching in either Griner et al. or Walker et al. that would have motivated one of ordinary skill in the art to combine these references. Accordingly, Applicant respectfully submits that the rejection is improper and should be withdrawn.

(2) Even if Combined, Griner and Walker Fail to Disclose the Claimed Invention

Even if the teachings of Griner et al. and Walker et al. were combined (which Applicant submits is an improper combination for the reasons stated in the previous section of this response), the combination still falls short of disclosing all of the claimed features of the invention. Again, the Office Action has already acknowledged that Griner et al. fails to disclose a POS and the opportunity for prospective event ticket purchasers to pre-purchase a recording copy, and Applicant has further noted that Griner et al. fails to disclose such opportunity being made available “before the live event occurs.” For reasons stated in the previous section of this response, Applicant respectfully submits that Walker et al. does not

¹ With all due respect to the Examiner, Applicant suspects that the referenced excerpt from Walker et al. (lines 55-63 of Column 17) may have been identified during examination because it contains certain terms (i.e., “pre-purchased,” “record,” and “point-of sale”), which are used throughout Applicant’s disclosure and claims, and which would seem to be logical choices for a text-based computer search of the prior art. Aside from the common occurrences of these “buzz words” (which are used and defined differently in Walker et al. and in Applicant’s disclosure), Applicant submits that Walker et al. is not relevant to the claimed invention.

make up for the shortcomings of Griner et al. because it does not disclose, teach or suggest a method of giving prospective event ticket purchasers an opportunity to pre-purchase a recording of the event at the POS of tickets before the live performance event occurs.

Furthermore, Figure 8B of Griner et al. shows a merchant completing a transaction in step "S8-15." Because the merchant completes the transaction at the point of sale the product must be tendered to the buyer at the point of sale or else the transaction would not be complete. Thus, the recording must already exist and therefore a pre-purchase of the recording, before the performance of the live event, is impossible as described by Griner et al.

Further still, in paragraph 0015, Griner admits that the invention is directed to tapping the bootleg market for live concert recordings. Since bootleggers record the concert and then sell their bootlegged copies, Griner teaches away from pre-purchasing recordings before the concert. Mobil Oil Corp. v. W.R. Grace & Co., 367 F. Supp. 207, 180 U.S.P.Q. 418, 452 (Conn.1973) (the fact that the prior art contains negative teachings is further evidence of non-obviousness).

As to Walker, the passage relied on by the Office Action does not suggest or teach pre-purchasing a recording of a live event. Rather, Walker describes a "pre-purchased discount as a purchasing incentive." See column 17, lines 56-57. Thus, it is the discount that is pre-purchased. In contrast, claim 1 recites pre-purchasing a recording.

Additionally, it is admitted in the Office Action (see page 5, lines 9-10), that the Examiner "did not suggest" that Walker suggests an opportunity to pre-purchase a recording. This admission is in direct conflict with the assertion that Walker teaches pre-purchasing a recording copy (see page 3, lines 9-14 of the Office Action). Moreover, the admission is silent with regard to a recording of a live performance event. Rather, the admission

discusses a mere product with no reference to a live performance event. Thus, it is unclear (at best) whether the Examiner considered the limitation of a live performance event. This is significant because the present invention's concept of offering a product (i.e., a recording of a live performance event) for sale before it is even possible to produce the product (i.e., before the live performance event to be recorded has even occurred) differs significantly from the ordinary retail environment, where products are generally not offered for sale or sold until they are produced, or at least capable of being produced when requested.

In summary, if Walker does not suggest a pre-purchase, and if Griner does not suggest a pre-purchase, then it follows that the proposed combination fails to suggest a pre-purchase. For all of the foregoing reasons, Applicant respectfully submits that Claim 1 is patentable over the cited references and the rejection of Claim 1 should therefore be reversed.

(iii) Dependent Claims 2-5 and 8-12

Claims 2-5 and 8-12 depend from claim 1 and are therefore believed to be patentable over the Griner et al. and Walker et al. references for the same reasons as claim 1 discussed above. Accordingly, the Applicant requests that the rejection of claims 2-5 and 8-12 be reversed.

(iv) Dependent Claims 13-18

Like Claim 1, Claim 13 recites, in pertinent part, the step of "providing, at a point-of-sale of tickets for a live performance event before said live performance event occurs, an opportunity for prospective event ticket purchasers to purchase one or more copies of a recording of said live performance event...".

For the same reasons discussed above in connection with the analysis of Claim 1, Applicant respectfully submits that Claim 13 is not made obvious by Griner et al. and Walker et al. Again, Applicant respectfully submits that Claim 13 is patentable over these references because (1) there is no teaching or suggestion contained in either reference that would have motivated one of ordinary skill in the art to combine their teachings to create the claimed invention, and (2) even if combined, the teachings of Griner et al. and Walker et al. still fall short of the claimed invention. Therefore, Applicant respectfully submits that Claim 13 is patentable over the cited references.

Claims 14-18 depend from Claim 13 and are therefore believed to be patentable over the Griner et al. and Walker et al. references for the same reasons as Claim 13 discussed above. Accordingly, the Applicant requests that the rejection of claims 13-18 be reversed.

B. Claims 32-38, 40, and 43 recite subject matter of the invention that is not made obvious by Griner et al. considered in view of Walker et al.

Independent Claim 32 recites:

A method comprising the steps of providing, at a point-of-sale of tickets for a live performance event, an opportunity for attendees of the live performance event to purchase one or more copies of a recording of said live performance event; conducting said live performance event; recording at least a portion of said live performance event; manufacturing copies of said recording; and distributing at least some of the copies of said recording to attendees of the live performance event that purchase them.

Because the opportunity to purchase copies of the recordings is provided at the point-of-sale of tickets to the live performance event the opportunity is provided at the time the prospective attendee purchases a ticket. Thus, the event must be either ongoing (or yet to

occur) or else the attendee would have no incentive to purchase a ticket to the event.

Because the event is ongoing the opportunity to purchase copies of the recordings occurs before the end of the event.

Therefore, for the same reasons discussed above in connection with the analysis of Claim 1, Applicant respectfully submits that Claim 32 is not made obvious by Griner et al. and Walker et al. Again, Applicant respectfully submits that Claim 32 is patentable over these references because (1) there is no teaching or suggestion contained in either reference that would have motivated one of ordinary skill in the art to combine their teachings to create the claimed invention, and (2) even if combined, the teachings of Griner et al. and Walker et al. still fall short of the claimed invention. Therefore, Applicant respectfully submits that Claim 32 is patentable over the cited references.

Claims 33-38, 40, and 43 depend from Claim 32 and are therefore believed to be patentable over the Griner et al. and Walker et al. references for the same reasons as Claim 32 discussed above. Accordingly, the Applicant requests that the rejection of claims 33-38, 40, and 43 be reversed.

C. Claims 6, 7, and 41-42 recite subject matter of the invention that is not made obvious by Griner et al. considered in view of Walker et al. and further in view of Stonedahl.

Claims 6, 7, and 41-42 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Griner et al. considered in view of Walker et al., and further in view of Stonedahl. Specifically, the Office Action states that the combination of Griner et al. and Walker et al. shows all of the limitations of the claims, except for specifying the steps of determining and calculating the number of copies of the recording. See the Office Action at

page 3. This presumes that the previous claim rejections based on only Griner et al. and Walker et al. were valid ones. For the reasons discussed above in conjunction with the rejection of Claims 1-5 and 8-18, Applicant respectfully submits that the combination of Griner et al. and Walker et al. *does not* in fact show all of the limitations of the claims other than what is allegedly disclosed in Stonedahl.

As discussed above, Applicant submits that independent Claims 1 and 13 are all patentable over the Griner et al. and Walker et al. patents. Because Claims 6, 7 and 41-42 depend from these claims, Applicant respectfully submits that they are patentable over Griner et al., Walker et al. and Stonedahl for the same reasons as Claims 1 and 13 discussed above. Accordingly, the Applicant respectfully requests that the rejection of claims 6, 7, and 41-42 be reversed.

D. Claims 39 recites subject matter of the invention that is not made obvious by Griner et al. considered in view of Walker et al. and further in view of Stonedahl.

Claim 39 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Griner et al. considered in view of Walker et al., and further in view of Stonedahl. Specifically, the Office Action states that the combination of Griner et al. and Walker et al. shows all of the limitations of the claims, except for specifying the steps of determining and calculating the number of copies of the recording. See the Office Action at page 3. As with the rejection of claims 6, 7, and 41-42, this presumes that the previous claim rejections based on only Griner et al. and Walker et al. were valid ones. For the reasons discussed above in conjunction with the rejection of claim 32, Applicant respectfully submits that the combination of Griner et al. and Walker et al. *does not* in fact show all of the limitations of the claim other than what is allegedly disclosed in Stonedahl.

As discussed above, Applicant submits that independent Claims 32 is patentable over the Griner et al. and Walker et al. patents. Because Claim 39 depends from Claim 32, Applicant respectfully submits that it is patentable over Griner et al., Walker et al. and Stonedahl for the same reasons as Claim 32 discussed above. Accordingly, the Applicant respectfully requests that the rejection of Claim 39 be reversed.

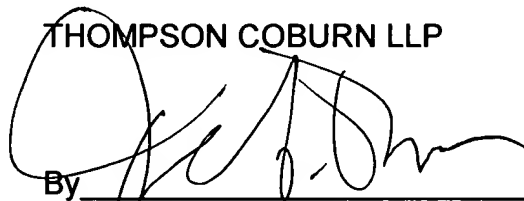
(9) Conclusion

For the reasons set forth above it is respectfully submitted that Claims 1-18 and 32-43 are allowable over the cited prior art. It is respectfully requested that the rejections of these claims be reversed and the claims allowed.

An oral hearing is not requested.

Respectfully submitted,

THOMPSON COBURN LLP

A handwritten signature in black ink, appearing to read 'Tom Polcyn', is written over a horizontal line. The signature is fluid and cursive.

By

Thomas A. Polcyn, #41,256
One US Bank Plaza
St. Louis, Missouri 63101
314-552-6331
FAX 314-552-7331

APPENDIX A
PENDING CLAIMS

1. A method comprising the steps of:

providing, at a point-of-sale of tickets for a live performance event before said live performance event occurs, an opportunity for prospective event ticket purchasers to pre-purchase one or more copies of a recording of at least a portion of said live performance event;

conducting said live performance event;

recording at least a portion of said live performance event;

manufacturing a desirable number of copies of said recording; and

distributing at least some of the manufactured copies of said recording to those that pre-purchased them.

2. The method of claim 1 wherein said live performance event comprises at least one of a live musical performance, a live choreographic performance, a live dramatic performance, a live oration and a live sporting event.

3. The method of claim 1 wherein said point-of-sale of tickets for said live performance event comprises at least one of a ticket box office that sells tickets for said live performance event, a telephone system adapted to permit a transaction over the telephone between a prospective event ticket purchaser and a remote prospective event ticket seller that sells tickets for said live performance event, a mail delivery system adapted to permit a transaction to take place by mail between a prospective event ticket purchaser and a remote

prospective event ticket seller that sells tickets for said live performance event, and a user interface connected to a computer network and adapted to permit an electronic transaction to take place via said computer network between a remote prospective event ticket purchaser and a remote prospective event ticket seller that sells tickets for said live performance event.

4. The method of claim 1 wherein said recording comprises at least one of an audio recording, a video recording and a transcript.

5. The method of claim 1 wherein said copies comprise at least one of phonograph records, audio cassettes, compact discs, mini-discs, digital audio tapes, video cassettes, DVDs, downloadable digital files, electronic documents and printed documents.

6. The method of claim 41 wherein the step of calculating a desirable number of copies of said recording to be manufactured includes calculating said desirable number of copies based on a function of the determined number of copies of said recording pre-purchased at said point-of-sale of tickets for said live performance event.

7. The method of claim 6 wherein said desirable number of copies is at least as large as a number of copies of said recording pre-purchased at said point-of-sale of tickets for said live performance event.

8. The method of claim 1 wherein the step of providing an opportunity for purchasers to pre-purchase copies includes providing the purchasers with an option to pre-

purchase one or more copies at the ticket box office that sells tickets for said live performance event before said live performance event occurs.

9. The method of claim 1 wherein the step of providing an opportunity for purchasers to pre-purchase copies includes providing a telephone system adapted to permit a transaction over the telephone between a prospective event ticket purchaser and a remote prospective event ticket seller that sells tickets for said live performance event before said live performance event occurs.

10. The method of claim 1 wherein the step of providing an opportunity for purchasers to pre-purchase copies includes providing a mail delivery system adapted to permit a transaction to take place by mail between a prospective event ticket purchaser and a remote prospective event ticket seller that sells tickets for said live performance event before said live performance event occurs.

11. The method of claim 1 wherein the step of providing an opportunity for purchasers to pre-purchase copies includes providing a user interface for a computer network adapted to permit an electronic transaction to take place via said computer network, before said live performance event occurs, between remote prospective event ticket purchasers and a remote prospective event ticket seller that sells tickets for said live performance event before said live performance event occurs.

12. The method of claim 1 wherein the step of providing an opportunity for purchasers to pre-purchase copies of a recording of at least a portion of said live

performance event requires the purchasers to purchase a ticket for said live performance event.

13. A method comprising the steps of:

providing, at a point-of-sale of tickets for a live performance event before said live performance event occurs, an opportunity for prospective event ticket purchasers to purchase one or more copies of a recording of said live performance event before a specified cut-off date;

conducting said live performance event;

recording said live performance event;

manufacturing a desirable number of copies of said recording; and

distributing at least some of the manufactured copies of said recording to those that purchased them before said specified cut-off date.

14. The method of claim 13 wherein the specified cut-off date occurs after the live performance event has occurred.

15. The method of claim 13 wherein said live performance event comprises at least one of a live musical performance, a live choreographic performance, a live dramatic performance, a live oration and a live sporting event.

16. The method of claim 13 wherein said point-of-sale of tickets for said live performance event comprises at least one of a ticket box office that sells tickets for said live performance event, a telephone system adapted to permit a transaction over the telephone

between a prospective event ticket purchaser and a remote prospective event ticket seller that sells tickets for said live performance event, a mail delivery system adapted to permit a transaction to take place by mail between a prospective event ticket purchaser and a remote prospective event ticket seller that sells tickets for said live performance event, and a user interface connected to a computer network and adapted to permit an electronic transaction to take place via said computer network between a remote prospective event ticket purchaser and a remote prospective event ticket seller that sells tickets for said live performance event.

17. The method of claim 13 wherein said copies comprise at least one of phonograph records, audio cassettes, compact discs, mini-discs, digital audio tapes, video cassettes, DVDs, downloadable digital files, electronic documents and printed documents.

18. The method of claim 13 wherein the step of providing an opportunity for purchasers to purchase one or more copies before a specified cut-off date includes giving the purchasers information regarding the price for each of said copies and the destination to which payment should be forwarded before said specified cut-off date.

32. A method comprising the steps of:

- providing, at a point-of-sale of tickets for a live performance event, an opportunity for attendees of the live performance event to purchase one or more copies of a recording of said live performance event;
- conducting said live performance event;
- recording at least a portion of said live performance event;
- manufacturing copies of said recording; and

distributing at least some of the copies of said recording to attendees of the live performance event that purchase them.

33. The method of claim 32 wherein the step of manufacturing copies of said recording occurs on site at the venue.

34. The method of claim 33 wherein the step of distributing at least some of the copies of said recording to attendees of the live performance event that purchase them occurs before the purchasing attendees exit the venue.

35. The method of claim 32 wherein the step of providing an opportunity for attendees of the live performance event to purchase one or more copies of a recording of said live performance event is performed at least in part after the live performance event has started.

36. The method of claim 32 wherein the step of providing an opportunity for attendees of the live performance event to purchase one or more copies of a recording of said live performance event is performed at least in part after the live performance event is concluded.

37. The method of claim 32 wherein the step of manufacturing copies of said recording includes copying said recording to compact discs, wherein each compact disc contains at least one copy of said recording.

38. The method of claim 32 wherein the step of manufacturing copies of said recording includes copying said recording to a computer, said computer being connected to a global computer network, and wherein the step of distributing copies of said recording includes distributing electronic copies by broadcasting the recording over the global computer network for post-event viewing by attendees of the live performance event that purchase a right to view said broadcast.

39. The method of claim 32 further comprising the steps of:
determining a number of copies of said recording purchased by attendees of the live performance event; and
calculating a desirable number of copies of said recording to be manufactured based on a function of the determined number of copies of said recording purchased by attendees of the live performance event;
wherein the step of manufacturing copies of said recording includes manufacturing said desirable number of copies.

40. The method of claim 32 wherein the step of manufacturing copies of said recording occurs on site at the venue, the step of distributing at least some of the copies of said recording to attendees of the live performance event that purchase them occurs before the purchasing attendees exit the venue, the step of providing an opportunity for attendees of the live performance event to purchase one or more copies of a recording of said live performance event is performed at least in part after the live performance event is concluded, and the step of manufacturing copies of said recording includes copying said recording to compact discs, wherein each compact disc contains at least one copy of said recording.

41. The method of claim 1 further comprising the steps of:

determining a number of copies of said recording pre-purchased at said point-of-sale of tickets for said live performance event; and
calculating the desirable number of copies of said recording to be manufactured.

42. The method of claim 13 further comprising the steps of:

determining a number of copies of said recording purchased before said specified cut-off date; and
calculating the desirable number of copies of said recording to be manufactured based on a function of the determined number of copies of said recording purchased before said specified cut-off date.

43. The method of claim 32 wherein said point-of-sale of tickets for the live performance event is located at the venue where the live performance is performed.